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*NOT ADMITTED TO DC BAR

August 11, 2004

Jeff S. Jordan
Federal Election Commission
999 E Street, N.W.
Washington, D.C. 20463

Re: MUR 5475

Dear Mr. Jordan:

As counsel for Oregon Citizens for a Sound Economy and Russ Walker, we hereby respond to the Amended Complaint filed in the above designated MUR.

Contrary to the allegations in the Amended Complaint, Oregon Citizens for a Sound Economy is not a separate corporation organized or recognized under § 510(c)(4) of the Internal Revenue Code. However, Citizens for a Sound Economy ("CSE"), which recently changed its name to FreedomWorks, Inc., is a § 501(c)(4) corporation, and Oregon CSE is a division of CSE.

While CSE admits that it is a corporation as alleged in paragraph 8 of the Amended Complaint, it has no comment on the remaining allegations of that paragraph. Not only are the allegations taken from an article written in the year 2000, they are irrelevant to this matter. It is permissible and legal for CSE to accept corporate contributions.

Complainant alleges that CSE's activities constituted prohibited in-kind corporate contributions to Nader for President 2004. Complainant further alleges that if a list of telephone numbers was purchased, rented, or on loan from CSE, the Oregon Republican Party, or Bush-Cheney '04, a prohibited in-kind contribution resulted. Complainant cites no evidence that CSE purchased or rented such a list, but merely makes a bald accusation. As shown below, this accusation is false and has no basis in fact.

The term "contribution" is partly defined as "any gift, subscription, loan, advance, or deposit of money or anything of value made by any person for the purpose of influencing any election for Federal office" or "the payment by any person of compensation for the personal services of another person which are rendered to a political committee without charge for any purpose." 2 U.S.C. § 431(8)(A)(i) and (ii). The term "contribution" does not include "any payment made or obligation incurred by a

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corporation or a labor organization which, under section 441b(b) of this title, would not constitute an expenditure by such corporation or labor organization.” § 431(8)(B)(vi).

As reflected in the definition of contribution, something of value must be *given* to a candidate, party committee or political committee for the purpose of influencing a federal election. In-kind donations of any goods or services without charge or at a discount are also considered treated as contributions.

The facts clearly indicate in this case that nothing was *given* or *donated* to Nader for President 2004, the Oregon Republican Party, or Bush-Cheney '04. Nor did CSE pay the compensation of another person for services rendered to the Nader campaign. As the attached affidavit shows, CSE did not coordinate its phone calls with Nader for President 2004, the Oregon Republican Party or Bush-Cheney '04. CSE had no contact with the Nader campaign. CSE's phone calls were an independent disbursement costing less than \$400.00.

Additionally, the cost of the phone calls cannot be considered to be a contribution because they are specifically excluded from the definition of contribution. Specifically, the phone calls do not constitute an expenditure under § 441b(b) because they were made to members of CSE. Nor are any calls subsequently made by CSE members to their friends and family considered to be contributions. Section 431(8)(B)(ii) specifically permits the use of personal property to conduct volunteer services.

Having already shown above that no in-kind contribution was made, and that no coordination occurred resulting in a coordinated expenditure, the other part of the analysis is whether CSE's payment for the phone calls constitutes an expenditure, i.e., an independent expenditure. An analysis of the phone script demonstrates that it does not contain express advocacy and, therefore, cannot constitute an independent expenditure.

In fact, Complainant does not allege that the script contains express advocacy. In paragraph 9, Complainant quotes a portion of the script, but then adds its own express advocacy language (in italics) that is not present anywhere in the press release or script. (“The release notes that ‘Ralph Nader opposes nearly every issue CSE fights for’ *but that having Nader on the ballot should help to defeat John Kerry.*” (emphasis added)). Unfortunately for Complainant, the Commission must examine the four corners of the document, and not language manufactured by Complainant.

As the Commission is well aware, a communication must contain express words of advocacy before it meets the definition of independent expenditure. Neither the press release, nor the phone script contain language advocating the election or defeat of any clearly identified candidate. Nowhere in the script are listeners urged to “vote for,” “vote against,” “elect” or “defeat” any candidate. While the script encourages the listener to sign a petition to put Nader on the ballot, this is not the equivalent of urging the listener to vote for Nader or against Kerry. Urging people to sign petitions merely furthers CSE's

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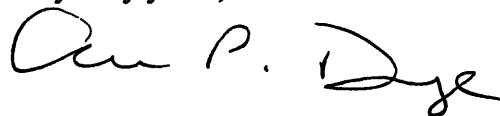
efforts of voter outreach and voter education and helps to broaden the debate by increasing ballot access. Having Nader on the ballot will highlight key economic issues and the candidates' positions on these issues.¹ A finding that encouraging individuals to sign a petition to get a candidate on the ballot is equivalent to urging them to vote for or against a candidate will have unintended consequences. Not only will it limit debate, it will result in less informed citizens and decreased participation in our democratic process.

As the attached affidavit demonstrates, CSE did not provide, purchase, rent or loan its list of members' telephone numbers to the Oregon Republican Party nor Bush-Cheney '04, nor did CSE receive, purchase, rent or receive a list of telephone numbers from the Oregon Republican Party or Bush-Cheney '04. The attached affidavit also demonstrates that CSE did not use the telephones of the Oregon Republican Party or Bush-Cheney '04.

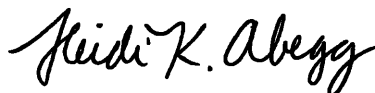
Based on the above, CSE and Mr. Walker respectfully request that the Amended Complaint be dismissed.

If you have any questions, please do not hesitate to contact us.

Very truly yours,



Alan P. Dye



Heidi K. Abegg

Attorneys for Oregon Citizens for a Sound
Economy and Russ Walker

¹ If the Commission finds that the script does not contain express advocacy, then the cost of the communication cannot be a contribution. As the court in *Orloski v FEC*, 759 F.2d 156, 163 (D.C. Cir. 1986) noted, "Under the Act this type of 'donation' is only a 'contribution' if it first qualifies as an 'expenditure' and, under the FEC's interpretation, such a donation is not an expenditure unless someone at the funded event expressly advocates the re-election of the incumbent or the defeat of an opponent or solicits or accepts money to support the incumbent's re-election." As noted above, the communication does not meet the definition of expenditure, was not coordinated, and, therefore, cannot be regulated as a contribution.

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**BEFORE THE
FEDERAL ELECTION COMMISSION**

In Re

Nader for President 2004)	
Clarissa Peterson, Treasurer)	MUR 5475
Oregon Citizens for a Sound Economy)	
Russ Walker, Northwest Director)	
Oregon Family Council)	
Tim Nashif, Staff)	
Mike White, Staff)	
Bush-Cheney '04)	
David Herndon, Treasurer)	
Steve Schmidt, Spokesman)	
Oregon Republican Party)	
Kevin Mannix, Chairman)	

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AFFIDAVIT OF RUSS WALKER

I, Russ Walker, being duly sworn, do depose and say:

1. I make this statement in connection with MUR 5475 to record certain facts that are within my personal knowledge.
2. I am Northwest Director for Citizens for a Sound Economy and was involved in arranging for the calls at issue to be made.
3. The press release attached as Exhibit B to the Amended Complaint contains a true and accurate transcription of the phone script used to make calls to Oregon CSE members, other than changes in the name of the school and the time that were made for each locality. No other script was used.
4. The decision to make telephone calls, and the development of the script, was made independently by CSE and without any coordination with Nader for President 2004, the Oregon Republican Party or Bush-Cheney '04.
5. CSE only used the telephone numbers of its members in Oregon to make the calls.
6. CSE did not purchase, rent or receive any telephone numbers from the Oregon Republican Party or Bush-Cheney '04.
7. CSE did not sell, rent, or give any telephone numbers to the Oregon Republican Party or Bush-Cheney '04.

Under 8. CSE paid for the cost of the telephone calls and spent approximately
\$ ~~4000~~ to make the calls.

9. CSE did not use Oregon Republican Party or Bush-Cheney '04 telephones
to make calls.

Further affiant sayeth not.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on August 11, 2004.



Russ Walker